IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/09/2002

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THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE C.NAGAPPAN

W.A.No.2319 of 2002
and
WA.M.P.No.3959 of 2002

1. State of Tamil Nadu rep. by
Secretary to Govt.,
Education Dept.,
Fort St.George, Chennai-9.

2. The Director of Collegiate Education,
College Road, Chennai-6. ... Appellants.

-Vs-

1. P.S.G. College of Arts & Science rep.
by its Secretary, Coimbatore,
Peelamedu.

2. University Grants Commission,
rep. by its Secretary,
Bahadur Shah Zafar Margh,
New Delhi 110 002. ... Respondents

Writ appeal filed against the order dated 11.9.2001 in
W.P.No.17042 of 1999 on the file of this Court.

!For appellants :: Mr.V.R.Rajasekaran,
Spl. Govt. Pleader (Edn.)

^For Respondents :: ---

:JUDGMENT

N.V.BALASUBRAMANIAN,J.
This appeal is preferred against the order of the learned
Single Judge made in W.P.No.17042 of 1999 dated 11.9.2001. The respondents 2
and 3 in the writ petition are the appellants herein. The writ petitioner is
the first respondent and the first respondent in the writ petition, viz.,

University Grants Commission is the second respondent herein.
2. The brief facts that are necessary for the disposal of the case are as under:- A Committee, by name, The Rasthogi Committee was constituted by the Government of India for the revision of pay scales of Teachers and other officers of Colleges and Universities and the Committee also made certain recommendations with reference to the same. The recommendations of the Committee were accepted by the University Grants Commission. The Government of India also decided to accept the Committee's recommendations and implement the scales of pay of the Teachers and other officers of colleges and Universities. The Government of India agreed to provide financial assistance to the State Governments for implementing the revised scales of pay. In pursuance of the orders of the Government of India, the Government of Tamil Nadu issued G.O.Ms.No.111, Higher Education (H1) Department, dated 24.3.19 99, and we are concerned only with paragraph-8 viz., 'Selection Committee in Aided Colleges' of Annexure II to the said Government Order, the validity of which was challenged by the writ petitioner in the writ petition. Learned Single Judge held that the paragraph-8 of Annexure II to the G.O.Ms.No.111 is invalid and quashed that portion of the impugned Government Order. It is against the order of the learned Single Judge, the present appeal has been filed.
3. Heard learned Special Government Pleader (Education). The submission of the learned Special Government Pleader is that the University Grants Commission has made certain recommendations regarding revision of scales of pay and the Government of India has also accepted the same, and according to him, when there is a revision in scales of pay in the cadre of lecturers and other officers employed in Government and aided colleges, it is necessary to select and appoint competent persons for the posts of Teachers and other officers in Colleges and Universities and the direction for constitution of a selection committee in aided colleges with experts on the subject does not in any way go against the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules made thereunder. His further submission is that colleges were given option to accept the scheme and when management has accepted the scheme, it is not open to the management to question the validity of the Government Order.
4. We have carefully considered the submissions of the learned Special Government Pleader. The question of validity of paragraph-8 of Annexure-II to the G.O.Ms.No.111 has to be considered in the light of the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (hereinafter referred to as 'the Private Colleges Act'). The Private Colleges Act itself has been enacted with an avowed object to regulate the conditions of service of teachers employed in private colleges and to make the rules relating to managing bodies and payment of grants to such colleges statutory. In relation to private colleges, section 2(2) of the Private Colleges Act defines 'college committee' to mean the college committee referred to in section 11. Section 11 provides for the constitution of college committee and it also provides for the constitution of members of the college committee. Section 14 of the Private Colleges Act regulates the functions of the college committee and under section 14(1)(b), the college committee is empowered to appoint teachers and other persons in private colleges, to fix their pay and allowances and to define their duties and conditions of service. Rule 11 (4) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 provides that the

college committee shall fill up the posts of teaching staff either by promotion or by direct recruitment, and the rule also provides that promotion shall be made on the basis of merit and ability and seniority shall be considered where merit and ability are approximately equal. The rule also provides that if qualified teachers in a college are found not suitable for promotion, the college committee is empowered to fill up the vacancies by direct recruitment by calling for applications from various sources mentioned in the schedule.

5. A co-joint reading of the provisions of the Private Colleges Act and the Rules clearly shows that the college committee has been constituted under the statute and it is given the power to appoint teachers in private colleges, and the mode of appointment of teachers and other persons is also regulated by the Rules made under the Private Colleges Act. The effect of the Government Order providing for the constitution of a selection committee and empowering the said committee to select and appoint lecturers and other officers in private collects is in direct violation of the relevant provisions of the Private Colleges Act and the Rules made thereunder. It is well established that an executive order cannot be issued against the provisions of a statute and the Rules framed thereunder, and the decision of the Supreme Court in P.SADAGOPAN v. FOOD CORPORATION OF INDIA (AIR 1997 SC 270 0) is an authority for the proposition that executive instructions cannot be issued in derogation of statutory provisions.

6. The submission of the learned Special Government Pleader is that option was given to the private aided colleges and they exercised the option and accepted the Government Order in so far as revision of scales of pay is concerned and therefore, it is not open to them to question the operation of the Government Order. As far as the option is concerned, we find that the scheme covers all teachers in Government and Government aided colleges unless they specifically exercise the option in writing to remain outside the scheme. In other words, the option was granted only to teachers in Government and Government aided colleges and no option is given or contemplated in respect of management of private aided colleges and therefore, the management of private colleges is not precluded from challenging that portion of the Government Order which prevents the effective functions of the college committee in the matter of appointment of lecturers and other officers. Therefore the submission of the learned Special Government Pleader regarding the availability of option to the management and private aided colleges is not acceptable.

7. The next submission of the learned Special Government Pleader is that by virtue of the Government Order, the powers of the college committee are not taken away and according to him, only some procedure for selection is prescribed in the Government Order. We are unable to accept the said submission. The Government Order constitutes a selection committee and also prescribes a coram for the said committee. The Government Order also prescribes the procedure for selection. A fair reading of the Government Order clearly shows that the selection committee is given the ultimate power to select and appoint teaching staff and other officers in private aided colleges. In other words, the college committee would be reduced to a nullity in the matter of selection and appointment of teachers and other officers in private colleges. The Government Order proceeds on the basis that the ultimate authority to select lecturers and other officers in private colleges

would be the selection committee and the college committee would have no say either in the process of selection or in the appointment. By the executive order, the relevant provisions of the Private Colleges Act and the Rules made thereunder would be rendered nugatory by the provision made for the appointment of the Selection Committee while the college committee continues without the power of selection. We are of the opinion that the Government of Tamil Nadu, by the issue of the executive instructions, cannot override the statutory provisions and take away the powers of the college committee by the issue of the Government Order. The fact that the University Grants Commission has recommended for upward revision of scales of pay of lecturers and other officers and the lecturers and other officers have accepted the same, and the further fact that the appellant has issued the Government Order to enable the Selection Committee to select persons of competence are not the grounds to hold that the provisions of the Private Colleges Act can be overridden by the executive order issued by the appellant. We are in complete agreement with the reasonings of the learned Single Judge and the view taken by the learned Single Judge is quite unexceptionable. We find no merits in the appeal. Accordingly, the appeal fails and the same is dismissed, in limine. Consequently, WA.M.P.No.3959 of 2002 is also dismissed.

Index: Yes
Website: Yes
(N.V.B.,J.) (C.N.,J.)
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To

The Secretary,
University Grants Commission,
Bahadur Shah Zafar Margh,
New Delhi 110 002.